

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
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Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

September 1, 1987

Dear

This letter is in response to your letter to me dated August 17, 1987 wherein you ask several questions regarding Chapter 186 of Statutes of 1987 (AB 60, Elder) which added section 69.5 to the Revenue and Taxation Code. The facts as related in your letter are as follows:

"We are property owners, eligible for the homeowner's exemption and have enjoyed the property tax relief given us under proposition 13. We wish to carry our tax structure forward to our replacement home. The sale of our home and the purchase of a replacement home are now in escrow.

"We are both over the age of 55, with the wife being disabled and husband retired, living on a fixed and moderate income. Our home and replacement home is and will be our principal place of residence, and both are within the same county of Orange.

"The sales price of our home, now in escrow, is \$156,500.00 and the purchase price of our replacement home, now in escrow, is \$160,000.00 which is within the (105%) range.

"With both the sale and replacement purchase being in escrow, with the same company, the sale and purchase are both contingent upon the other. The equity in our home is needed to help pay for the replacement purchase thus they are also scheduled to close on the same date."

Based on the foregoing facts, you have asked the following questions:

1. Escrow instructions can be amended as needed, therefore how should the close of escrow be stated in order to qualify us under the definition of the (105%); (a) concurrently on the same day, (b) have the sale of our home close one day and the replacement purchase close the following day, or (c) it doesn't make any difference.

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c/o [unclear]
Trans [unclear]

September 1, 1987

Response: We are prohibited from advising you how to structure your transactions. As indicated in our letter to you of August 19, 1987, however, it is our opinion that section 69.5(g)(5)(B) (the 105% provision) is ambiguous in cases where the sale of the original property and the purchase of the replacement property occur on the same day. In our view, if the purchase of the replacement property occurred at least one day after the sale of the original property, no such ambiguity would exist.

2. The term "sale," to us, means when the deed is actually recorded, not the date of contracting to sell or buy the replacement nor the date escrow opens or closes. Therefore, is it true that regardless of when the two escrows close, even if the same day or one day apart, if the escrow company records the deeds the same day we are safe in being able to carry the tax structure forward.

Response: The term "sale" is defined by section 69.5(g)(8) to mean "any change in ownership of the original property for consideration." The word "purchase" is defined by section 67 to mean "a change in ownership for consideration." Neither section specifies when a sale or purchase is deemed to occur.

Property Tax Rule 462(n) provides in relevant part that "for purposes of reappraising real property as of the date of change in ownership of real property, the following dates shall be used:

(1) Sales.

(A) Where the transfer is evidenced by recordation of a deed . . . , the date of recordation shall be rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties became specifically enforceable.

Thus, although recordation of the deed to the replacement property one day after recordation of the deed to the original property would raise a presumption that the replacement property was purchased one day after the sale of the original property, it is possible that, under the foregoing rule, the assessor might attempt to rebut the presumption. He would succeed by showing either that the date all parties' instructions were met in escrow with respect to the replacement property was not later than the corresponding date with respect to the original property or that the agreement of the parties

September 1, 1987

with respect to the replacement property did not become specifically enforceable after the date the agreement of the parties with respect to the original property became specifically enforceable.

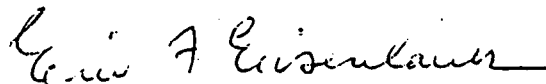
Therefore, in order to satisfy the requirement of section 69.5(g)(5)(B) that the replacement dwelling is "purchased . . . within the first year following the date of the sale of the original property" we are of the opinion that the following three events must occur at least one day after the recordation of the deed to the original property:

- a) the recordation of the deed to the replacement property;
 - b) The satisfaction of all parties' instructions in escrow with respect to the replacement property; and
 - c) the agreement of the parties with respect to the replacement property becomes specifically enforceable.
3. Due to the fact that the equity in our home is being used as part payment for our replacement home with the escrow company being the one transferring those funds, will this be considered a purchase within the first year following the date of the sale of the principal property, in order to qualify for the (105%), to carry the tax structure forward.

Response: Please see responses to questions 1 and 2 and our prior letter to you.

If you have any further questions regarding this matter, please let us know. The views expressed in this letter are, of course, advisory only and are not binding on the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

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DOUGLAS D. BELL
Executive Secretary

August 19, 1987

Dear

This will confirm our recent telephone conversation in which you requested our opinion as to the applicability of Proposition 60 and its implementing legislation AB 60 under the following facts:

You currently own and occupy as your principal residence a home in Cypress, California. You are over 55 years of age. You are contemplating the sale of your home at a price of \$156,000 and the purchase of a replacement home in the same county as your principal residence at a price of \$160,000. Each transaction is to close escrow on the same day.

Section 1 of Chapter 186 of the Statutes of 1987 (AB 60, Elder), effective July 23, 1987, added section 69.5 to the Revenue and Taxation Code. Section 69.5 provides generally that any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption may transfer the base year value of his or her principal residence to a replacement dwelling of equal or lesser value located within the same county which is purchased or newly constructed as a principal residence within two years from the date of the sale of the original property.

The phrase "equal or lesser value" is defined in section 69.5(g)(5) as follows:

"'Equal or lesser value' means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

"(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the date of the sale of the original property.

1. Rm. Use Value

Prop 13
R+T 69.5

August 19, 1987

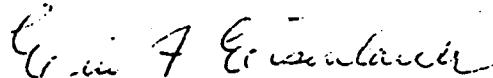
"(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

"(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property."

Since the replacement dwelling is not being purchased prior to the date of the sale of the original property in this case, it seems clear that subdivision (A) is not applicable. The problem here, however, is that the 105 percent provision of subdivision (B) requires that the replacement property be purchased "within the first year following the date of the sale of the original property." This language seems to indicate that the replacement property must be purchased at least one day after the sale of the original property to qualify under subdivision (B). This interpretation, however, would result in ambiguity as to the applicability of section 69.5 in cases where the sale of the original property and the purchase of the replacement property occur on the same day. Since the replacement property is not to be purchased prior to the date of the sale of the original property, it is likely that the ambiguity would be resolved by a court in favor of the application of the more liberal 105 percent provision in cases such as this. In order to avoid the problem, however, it would be advisable to delay the closing of escrow and deed recordation on the replacement property until a few days after the sale of the original property has closed if that is possible.

If you have any further questions regarding this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

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